

David L. Mazaroli (DM-3929)  
Attorney for Plaintiff  
11 Park Place – Suite 1214  
New York, NY 10007-2801  
Tel. (212)267-8480  
Fax. (212)732-7352  
*e-mail: dlm@mazarolilaw.com*

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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HANSA MEYER GLOBAL TRANSPORT	:	ECF CASE
GmbH & Co. KG,	:	
	:	
Plaintiff,	:	08 Civ. 1028 (HB)
	:	
-against-	:	<b>COMPLAINT</b>
	:	
INDEPENDENT CONTAINER LINE LTD;	:	
ICL; EXACTA INTERNATIONAL INC.;	:	
SWIFT TRANSPORTATION CO. INC.,	:	
	:	
Defendant.	:	

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### FIRST CAUSE OF ACTION

Plaintiff, through its undersigned attorney, alleges as follows for its complaint against defendants:

1. This action includes a maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1333 and 1337 as this action arises from the intermodal carriage of cargo moving from the United States to a foreign county and said carriage included road carriage governed by federal statutes, including the Carmack Amendment to the Interstate Commerce Act of 1887 ("Carmack Amendment"), Act of June 29, 1906, ch. 3591, 34

Stat. 584 (1906) (current version as to road carriage at 49 U.S.C. § 14706), as well as substantial intended ocean carriage.

2. Plaintiff Hansa Meyer Global Transport GmbH & Co. KG, as successor-in-interest of GTC Global Transport Internationale Spedition GmbH & Co. KG, is a corporation organized under the laws of the Federal Republic of Germany and brings this action against defendants to recover compensatory damages arising from transit damage to the shipment in suit and for indemnity and/or contribution from defendants for any and all amounts for which plaintiff may be held liable to the actual cargo owner and/or its subrogees.

3. Defendant Independent Container Line Ltd. (“ICL”) is believed to be a corporation organized under the laws of one of the fifty states or a foreign sovereign. Defendants Swift Transportation Co. Inc. (“Swift”) and Exacta International Inc. (“Exacta”) are believed to be corporations organized under the laws of, and with their principal places of business in, certain of the fifty states.

4. Upon information said defendants conduct business as common carriers, and the provision of services related thereto, with respect to shipments to, from and within the State of New York and the United States as a whole.

5. This action involves loss and damage to a shipment of siding and table tops and related items carried in carrier-provided container ICUU4963014 which moved, or were intended to move, in intermodal through transport, including intended ocean transport aboard the M/V INDEPENDENT PURSUIT, Voy. 044, from Bradford, PA. to Oberstenfeld, Germany, as described more fully in ICL booking number 0044CA091360 dated on or about January 29, 2007, with carriage by road to the port of ocean vessel

loading at Chester, PA, arranged and/or performed by defendants Exacta and Swift as described more fully in certain other transportation documents issued by or on behalf of defendants. (B/L 99946)

7. The aforesaid loss and damage was caused by defendants' reckless failure to properly load, stow, lash, carry, care for and deliver the subject cargo and the uncargoworthiness of the carrying container and vehicle.

8. As a result of the aforesaid, defendants are liable to plaintiff as common carriers, forwarders, bailees and/or warehousemen-for-hire for damages in the amount of \$44,583.80.

9. In addition plaintiff seeks indemnification and/or contribution from defendants for attorney fees and litigation defense costs arising from any claim or court action by the owners and/or subrogated insurers of the cargo.

10. Plaintiff sues herein on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

## **SECOND CAUSE OF ACTION**

11. Plaintiff repeats and realleges the allegations stated in Paragraphs 1 through 10 of this complaint.

12. On or about January 31, 2007 the cargo in suit was transported by road from Bradford, PA to Chester, PA, aboard a motor vehicle owned, operated, hired or arranged by defendants.

13. Defendants failed to deliver the shipment to the consignee in good order and condition. Instead as a result of a reported road incident on or about January 31, 2007 the cargo sustained damage which rendered it unfit for intended usage.

14. As a result, defendants ICL, Swift, and Exacta are jointly and severally liable pursuant to the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. §14706, and other federal statutes and federal common law governing transportation of cargo in interstate commerce.

### **THIRD CAUSE OF ACTION**

15. Plaintiff repeats and realleges the allegations stated in Paragraphs 1 through 10 of this complaint.

16. Defendants ICL, Swift, and Exacta breached their fiduciary duties and contractual obligations to plaintiff by negligently failing to properly (a) monitor and inspect the cargo when it was received into their actual or constructive custody; and (b) protect and pursue claim rights against preceding, connecting and/or delivering carriers. To the extent that said breaches prejudice plaintiff's rights of recovery, indemnification or contribution, said defendants are thereby liable to plaintiffs for all resulting damages and losses.

WHEREFORE, plaintiff demands judgment against the captioned defendants jointly and severally in the amount of \$44,583.80 in addition to interest at the rate of 9% per annum and the costs of this action. In addition plaintiff seeks indemnification and/or contribution from defendants for any and all amounts, including attorneys fees and costs, for which it may be held liable to the owner and/or subrogated insurer of the cargo as well as attorneys fees and costs incurred in the defense of such claim or action.

Dated: New York, New York  
January 31, 2008

LAW OFFICES,  
DAVID L. MAZAROLI

*s/David L. Mazaroli*

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David L. Mazaroli (DM 3929)  
Attorney for Plaintiff  
11 Park Place - Suite 1214  
New York, New York 10007  
Tel.: (212)267-8480  
Fax.: (212)732-7352  
E-mail: dlm@mazarolilaw.com  
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